

Town of Cornish, New Hampshire
Zoning Board of Adjustment
Case 16-03
Informal Public Hearing
September 26, 2016

The Cornish Zoning Board of Adjustment met on Monday, September 26, 2016, at 6:30 pm in the Cornish Town Offices. Members present were Caroline Storrs, Chair, Jason Bourne, Jim Brown, Kate Freeland, and Bruce Tracy.

Jack Bingham, Gwyn Gallagher, Betty Miller, Doug Miller, Dale Rook, and Judy Rook attended the meeting.

Caroline Storrs called the meeting to order at 6:33 pm.

Case 16-03 Caroline Storrs opened the informal meeting concerning a request by Betty and Doug Miller to construct a 100 KW solar installation. Ms. Storrs asked whether or not the proposal fit into the current Cornish regulations. Bill Balch, Clerk, had called Ms. Storrs regarding the warning of the meeting. The Zoning Board reviewed the definition of multi-use conversion and utility structures under Article IV of the Zoning Ordinance. Jason Bourne noted that the wording ‘similar utility structures’ could apply to the proposed use. Jim Brown and Caroline Storrs felt that the definition applied only to public utilities. Jim Brown added that a commercial use on a rural lot would not work. He added that a special exception would be required, and that the use is not a listed use. Jim Brown stated that he felt the proposed use would not be classified as a utility structure. Mr. Brown cited recent state law requiring zoning ordinances to encourage solar use.

Jack Bingham, of Barrington Power, stated that in his opinion Utility Structures under Article IV included public and non-public utilities. Doug Miller added that public utilities are owned by private investors. Ms. Storrs stated that public utilities must undergo further public oversight. Mr. Bingham continued that the proposed use would be classified as a utility generator under Federal NAICS Code, use. Thirdly, the use would be treated as a large-scale power generator by Eversource, a public utility.

Ms. Storrs said that she hoped the Planning Board would address solar uses in the Zoning Ordinance.

Gwyn Gallagher asked how the application had come to the Zoning Board. Ms. Storrs stated that the Millers had been denied a building permit. The Selectboard had classified the use as a utility structure. Ms. Storrs stated that it is up to the Zoning Board to warn the hearing correctly; sometimes the Selectboard incorrectly classifies the use. Mr. Gallagher asked why the meeting had not been warned as a regular public hearing. Ms. Storrs said that the application had to be warned lawfully. Mr. Gallagher said that the Selectboard had classified the use, and that the applicant was owed a public hearing. The Zoning Board could deny it, but the applicant would have an opportunity for an appeal.

Dale Rook stated that Utility Structure does not specify water, wind, or electric. He did not see why Utility Structure did not apply to solar uses. He felt that the Board was trying to put more into the definition than existed.

Gwyn Gallagher asked if this was a public hearing. Ms. Storrs said that it had been noticed as such. Mr. Bingham presented an overview of the project to the Zoning Board. Kate Freeland said that she worried that the proposal could open the use to much larger-scale projects. Ms. Freeland worried that accepting the use under the current definition would allow for a much larger project. Gwyn Gallagher asked if the Zoning Board took applications on a case by case basis. Ms. Storrs said that the Board did; however, it would be hard to deny another applicant the same right.

Jim Brown stated that if the use was a utility structure per Article IV of the Zoning Ordinance, it would need a special exception. The Board reviewed the criteria for a special exception. Doug Miller referred to the process to apply to Eversource which went through the Public Utilities Commission. Mr. Bingham added that the site, a former sand pit, was unique in that the impact to abutters would be minimal.

Dale Rook stated that he and Judy Rook had walked Sunset Strip and Root Hill Road. The former gravel pit was not visible. Jason Bourne said that he thought the proposal could be interpreted as a Utility Structure and that the Special Exception process allowed for the Board to take applications on a case by case basis. He felt that the use was allowed within the Ordinance. Mr. Rook concurred. Ms. Freeland also felt that the use fit into the definition of 'Utility Structure.'

Ms. Storrs said that she would ask the Clerk to warn the hearing as a Special Exception under Article IV, Utility Structures. The hearing will be scheduled for October 10, 2016.

Other Business

Gwyn Gallagher asked the Zoning Board to review the procedure for meeting outside of hearing cases. Ms. Storrs stated that the Zoning Board met as a quasi-judicial Board. Mr. Gallagher presented the October 12, 2015 minutes and asked why the Board had met for an informal discussion. Storrs said the Board had met to discuss a complaint that she had received about a zoning irregularity. Ms. Storrs said that she had wanted to apprise the Board of her meeting with the Selectboard. Mr. Gallagher said that he had been concerned that the Zoning Board was taking on administrative and enforcement duties of the Selectboard. Ms. Storrs said that meeting had been held to inform the Zoning Board of her meeting with the Selectboard.

Kate Freeland made a motion to adjourn. Jim Brown seconded the motion, and the vote of the Board was in the affirmative.

Respectfully submitted,
Heidi Jaarsma, Recording Secretary